BAIL FOR IMMIGRATION DETAINEES

28 Commercial Street, London E1 6LS
Email: bailforimmigrationdetainees@yahoo.co.uk
Tel: 020 7247 3590 Fax: 020 7247 3550

The Right Honorable Tony Blair MP
10 Downing St
London
SW1A 2AA

By fax to: 020 7925 0918

16th July 2002

Re: The detention of families and children by the United Kingdom Immigration Service.

I am writing on behalf of Bail for Immigration Detainees (BID) to bring to your attention the decision of your Government to change the policy regarding the detention of families under Immigration Act powers. This decision has been made at a Ministerial level without statistical evidence to demonstrate that the use of immigration detention for families is necessary or proportionate to the aim of immigration control.

BID believe that this decision is inexcusable in a liberal democracy and has led to great suffering amongst children and families. It is disproportionate in relation to the human rights of the families and children who are its victims, and is arguably unlawful. Further, it is a vast waste of public money to detain asylum-seeking families who are, for reasons outlined below, unlikely to lose contact with the Immigration Service.

The purpose of our letter is to urge you to immediately rescind the recent change in policy. We have chosen to raise our concerns through an open letter because we believe the issue to be of such importance.

We have set out below the key points relating to changes to the policy of detaining families since 1998.

i) Policy on the use of immigration detention for families prior to 25 October 2001

Prior to 25 October 2001, the policy with respect to the detention of families by the UK Immigration Service was set out in the white paper of July 1998, 'Fairer Faster and Firmer'. The white paper stated;

> *'The detention of families is particularly regrettable, but is also sometimes necessary to effect removal of those who have no authority to remain in the UK and who refuse to leave voluntarily. Such detention should be planned to be effective as close to removal as possible so as to ensure that families are not normally detained for more than a few days.'*[1]

Officers of the UK Immigration Service, who are responsible for deciding whether a family should be detained, were notified of the Government's policy through instructions contained in the Operational Enforcement Manual [2] and the Immigration Department Instructions[3]:

> *'In the White Paper 'Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum' published in July 1998 the Government made it clear the power to detain must be retained in the interests of maintaining effective immigration control.'*[4]

---

[1] 'Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum' paragraph 12.5, July 1998
[2] The Operational Enforcement Manual. Last revised 02/05/2001
[3] Currently undisclosed by the Immigration Service.
[4] Op cit at Chapter 38.1

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

These instructions to the Immigration Service go on to set out how the use of detention must be balanced against the right to respect of private and family life (Article 8 of the European Convention on Human Rights) and state:

> *'..it may be legally defensible under the Human Rights Act to interfere with a person's right to family life by detaining them in order to enforce the immigration control. But it would have to be shown to a court that a decision to detain corresponded with one of the legitimate interests which justify interference and that* ***the interference in family life caused by the detention went no further than was strictly necessary to achieve that aim*** *[our emphasis]'.*[5]

No statistics are made available as to the number of children in families detained, but in our experience it was rare for a family to be detained for more than a few days and the Immigration Service usually followed the instructions outlined above. Families awaiting the outcome of their asylum applications were generally given their freedom by way of the procedure of 'Temporary Admission'. In our experience, families in this position rarely abscond and there is no evidence available to suggest the contrary. Their motivation for maintaining contact with the authorities and complying with the terms of their admission is clear. They do not want to jeopardize their child's future by living illegally. Asylum seeking families develop a range of links to the community and seek stability. Parents detained with their children often repeat that it would be impossible for them to "go underground" with a child or children to care for.

ii) Change of policy announced on 25 October 2001 to one which would allow longer term detention of families

BID was notified of an unwelcome change in policy through a letter from Kevan Brewer, the Director of Immigration Services Detention Services, on the 25th October (attached). He stated that:

> *'The increase in family detention accommodation will allow the detention of those families whose circumstances justify this (i.e. a risk of absconding, identities and claims need to be clarified or pre-removal) but are not detained at present because they fall outside the detention criteria as qualified for families'.*

In order to be justifiable there would need to be evidence indicating that the change in policy was such that it was '*strictly necessary to achieve that aim'*.[6] In fact, this was not the case and it was subsequently disclosed at a meeting on 27th May 2002[7] that the policy change was a Ministerial decision and was not derived from statistical information.

In a letter to BID confirming this (attached), Simon Barrett, Assistant Director of the Detention Services Policy Unit notes:

> *'I can confirm that the decision to change the detention criteria in terms of families was indeed a Ministerial one. It was not derived from statistical evidence but rather was based on the recognition that in some cases families would give rise to similar concerns that might be encountered in relation to single adults and that, accordingly there would be occasions when it would be appropriate to detain families for longer periods and at other points in the process than simply a few days immediately prior to removal.'*[9]

There is nothing to suggest that there was a level of absconding which warrants a change of policy to one which interferes with both the family and private life.

---

[5] Op cit at chapter 38.1.1.2
[6] Op cit at chapter 38.1.1.2
[7] Meeting of the Detention User Group on 27th May 2002

[9] Letter to BID of 18 June 2002

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

iii) The requirement of proportionality

We were extremely surprised that the decision to start detaining families for longer periods was not based on any statistical evidence indicating that families abscond, particularly when the previous policy recognised that even a short period of detention prior to removal was *"particularly regrettable"*[10]

The law requires any interference in a qualified human right to be *'no more than is necessary to accomplish the objective'*. [11] On the basis of Mr Barrett's letter it appears that the Minister has instituted a policy of detaining families for prolonged periods of time without evidence to suggest that families abscond. If families do not abscond then it cannot be justifiable to detain them for long periods of time. Without evidence that they do abscond it cannot be argued that the policy change is necessary to accomplish the objective of immigration control. It is thus arguably unlawful.

In view of the fact that recent independent research has suggested that the Immigration Service *'lacks the ability to forecast absconding [of detained asylum seekers] with any degree of accuracy'*[12], it is our view that it is improper for a minister to give Immigration Officers instructions to detain families. Indeed there is an astonishing lack of any independent research into the detention criteria used by the Immigration Service. The Research Development Statistics of the Home Office have confirmed in a letter to BID that *'..the Home Office has not commissioned any research on the subject of compliance with Temporary Admission in connection with detention criteria over the past twelve years'*.[13]

The Immigration Service officers who make the decision to detain families simply do not have any independent information on whether families generally abscond or not. Mr Barrett's letter argues that such data would have little relevance to a decision to detain. However, if the data suggested that families did not generally abscond then there would little point in an officer making a decision to detain them. It is our view that the absence of any such statistical information renders the detention decision suspect. In any event the current criteria used in detention decisions (currently employed in relation to the detention of families) have not been subjected to independent investigation as to their effectiveness since their introduction twelve years ago.

BID is particularly concerned about the current policy on family detention in the light of the government's decision to repeal part III of the 1999 Immigration and Asylum Act in the new Nationality and Immigration Bill. The provision for automatic bail hearings after 7 and 35 days in detention was set out in the 1999 Act but was never implemented. This decision will remove a much needed safeguard against the detention of families for prolonged periods and may give rise to families being detained for long periods without independent judicial oversight.

iv) The impact of the policy on the welfare and rights of children

It is difficult to comprehend why the detention of families, even for a few days, which was 'particularly regrettable' in 1998, has now become acceptable for longer periods of time without any evidence that its use is necessary in order to maintain immigration control.

We are deeply concerned that the consequence of this new policy is that families with children are being detained for prolonged periods of time when, in our view, it is highly likely that they will remain in contact with the authorities if they are given their freedom by the grant of temporary admission.

---

[10] 'Fairer, Faster and Firmer' at paragraph 12.5 As discussed above.
[11] R v Secretary of State, Ex Parte Daly [2001] UKHL
[12] 'Maintaining Contact: What happens after detained asylum-seekers get bail?' South Bank University. Bruegel and Natamba. June 2002
[13] Letter to BID from RDS of 7 May 2002.

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

An increase in the use of detention for families raises fundamental questions in relation to the welfare and rights of children. It is difficult to envisage how detention facilities can offer children, many of whom have sought refuge here from extreme trauma and distress, the support they need. Uniformed staff run detention centres, which are characterised by gates, locks, cameras and restrictions on movement. Provision for education, play and health facilities are limited and inadequate. BID reject the argument that by improving staff training and available facilities detention of children will be more acceptable. Detention can never be in the best interests of a child and the suffering it causes is in breach of the principles of the United Nations Convention on the Rights of the Child.

In a recent case known to BID young children were detained for four months even though there was no imminent prospect of removal and the family had always kept in contact with the Immigration Service.

A mother and father with a young baby and a toddler arrived in the UK in the autumn of 2001 and immediately claimed asylum. They were admitted on 'Temporary Admission' but the Home Office refused to consider the asylum application because they had passed through a third country. They lived at the address required by the Immigration Service until they were detained in early 2002 when the Immigration Service was about to return them to the third country. However, they were not removed because a judicial review was lodged challenging this decision, a process which can take some months. Despite the fact that there was no imminent prospect of their removal, that very young children were detained and the evidence that the family had always complied with the instructions of the Immigration Service, the family continued to be detained for four months. BID listed a bail application on their behalf, however the Immigration Service moved the family to a different detention centre and so they were not brought to court. Without evidence from the family the Adjudicator refused the application for bail. A further application for bail was made later at which the family were present. The independent adjudicator then agreed that the family should not be detained and they were released having spent four months in detention. They have since maintained contact with the Immigration Service.

Conclusion

In the absence of any evidence to the contrary, we are extremely concerned that this policy has been adopted because it has been deemed in some way to be politically useful. We invite you to conclude that it is completely unethical and unworthy of the government of a liberal democracy to victimise children for political gain, and we urge you to immediately rescind the policy change of 25 October 2001.

Yours sincerely

Tim Baster
Coordinator

Encl:

Letter to BID from Kevan Brewer, Director, Immigration Service Detention Services, 25th October 2001

Letter to BID from Simon Barrett, Assistant Director of the Detention Services Policy Unit, 18th June 2002

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com